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THE LOS ANGELES BAR ASSOCIATION

BULLETIN

Official Publication of the Los Angeles Bar Association, Los Angeles, California

PRESIDENT'S PAGE—
PROPOSED AMENDMENTS TO THE CONSTITUTION AND BY-LAWS

CALIFORNIA GAS CONSERVATION LAW—Continued

TRAINING IN LAW AS A PREPARATION FOR BUSINESS

TREND IN MOTOR VEHICLE LEGISLATION

DECLARATORY RELIEF AND ITS OPERATION

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Bar Association Monthly Dinners Resumed

THURSDAY, OCTOBER 23, FIRST FALL MEETING. DISTINGUISHED SPEAKER AND OTHER INTERESTING FEATURES OF VARIED PROGRAM WILL ENTERTAIN MANY PROMINENT GUESTS AND MEMBERS

Date: Thursday, October 23rd

Place: Alexandria Hotel

Time: 6:30 p.m.

The first Fall meeting and dinner of the lawyers of Los Angeles County, under the auspices of the Los Angeles Bar Association will be held at the time, place and on the date above named. The Program Commmittee has arranged a program that merits an attendance even greater than that which marked the monthly meetings before the summer adjournment.

President Norman A. Bailie will preside. Dr. Lewis Terman, Professor of Psychology, Stanford University, will be the guest speaker, and his subject will be "Psychology and the Law." He will discuss crime prevention, the psychology of testimony, psychological methods of securing testimony, and the "lie detector."

Among the many other distinguished guests who will be introduced are the following: Federal Judges, Hon. William P. James, Hon. Paul J. McCormick, Hon. George Cosgrave; six Justices of the Appellate Court, N. P. Conrey, Frederick E. Houser, John M. York, Lewis R. Works, Gavin W. Craig, and Ira F. Thompson; Miss Annabel Matthews, member of Board of Tax Appeals; Dr. Ernest C. Moore, president of U.C.L.A.; Dr. R. B. von Kleinsmid, president of U.S.C.; Dr. Remsen Du Bois Bird, president of Occidental College; Dr. Charles K. Edmonds, president of Pomona College; professors of Psychology, Dr. Milton Metfessel and Dr. George H. Mount, U.S.C.; Dr. Joseph A. Generelli, Dr. John Layman, and Dr. Shepherd Franz, U.C.L.A.; Dr. M. J. Stormgand, Occidental, and Dr. Bernard C. Ewer, Pomona.

The program has been arranged by Arthur M. Ellis, Florence M. Bischoff, Joe Crider, Jr., Roy Rhodes, and Walter E. Burke.

Los Angeles Bar Association Bulletin

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of The Los Angeles Bar Association Bulletin published monthly at Los Angeles, California for October 1, 1930. State of California, County of Los Angeles ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared J. M. Boyd, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the Los Angeles Bar Association Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
Publisher Los Angeles Bar Association, 1126 Rowan Bldg., Los Angeles, Calif. Editor Birney Donnell, 511 Citizens Nat'l. Bank Bldg., Los Angeles, Calif. Business Managers Parker, Stone & Baird Company, 241 E. 4th St., Los Angeles, Calif.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)
The Los Angeles Bar Association, an unincorporated association, composed of members of the Los Angeles City and County Bar. Address: 1126 Rowan Building, Los Angeles, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is ———. (This information is required from daily publications only.)

PARKER, STONE & BAIRD COMPANY,
by J. M. BOYD

(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this 2nd day of October 1930. DONALD M. REDWINE

(SEAL) (My commission expires June 26, 1932)

Form 3526.—Ed. 1924.

California Gas Conservation Law Undergoes Judicial Test

SUIT TO RESTRAIN UNREASONABLE WASTE RESISTED BY INDEPENDENT PRODUCERS. CONSTITUTIONALITY OF ACT ATTACKED. PRELIMINARY INJUNCTION GRANTED. WRIT OF PROHIBITION BY COURT OF APPEAL. PETITION TO SUPREME COURT FOR WRIT OF SUPERSEDEAS PENDING. HEARING ON PERMANENT INJUNCTION SOON. VAST INTERESTS INVOLVED. HISTORY OF CASE.

By George R. Larwill of Los Angeles Bar

(This article continued from September Issue)

No general statement of what does or does not constitute an uncertainty sufficient to render a statute void should be attempted. Like the line between the reasonable and arbitrary exercise of the police power, it must be approached step by step from definite guide posts. Thus a statute making it a crime for railroads to charge more than "just and reasonable rates" is void for uncertainty[42] while a statute requiring railroad companies to maintain "convenient and suitable" waiting rooms is valid.[43] The term "unreasonable speed" in the California Motor Vehicle Act has received judicial sanction here as sufficiently certain[44] and the case approved in Indiana.[45] Then there are motor law cases holding that a requirement that "he shall render such assistance as may be reasonable and necessary" is too vague to form a basis of criminal prosecution.[46] So, also, is a requirement of "proper control of car on curves."[47] We could lose ourselves in a jumble of confusion over words and phrases and distinction as to "price fixing," "penalty fixing" and "employment regulating." Let us approach this particular problem in the light of reason.

The rule of reason as a definite part of our jurisprudence came with the famous decree dissolving the Standard Oil trust,[48] wherein Chief Justice White, in considering the Sherman anti trust act providing that every contract combination, in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal, said that such legislation should be interpreted in the light of reason and the penalty of the statute should be applied only to undue or *unreasonable* restraint of trade.

"* * * as the acts which may come under the classes stated in the first section and the restraint of trade to which the section applies are not specifically enumerated or defined, it is obvious that judgment must in every case be called into play in order to determine whether a particular act is embraced within the statutory classes, its nature or effect causes it to be in restraint of trade within the intendment of the act. To hold the contrary would require the conclusion either that every contract, act or combination of any kind or nature, whether it operated in restraint of trade or not, was within the statute, and thus the statute would be destructive of all rights to contract or agree or combine in any respect whatever as to subjects embraced in interstate trade or commerce, or, if this conclusion were not reached, then the contention would require it to be held that, as the statute did not define the things to which it related, and excluded resorts to the only means by which the acts to which it relates could be ascertained, — *the light of reason*,—the enforcement of the statute was impossible because of its uncertainty. The mere generic enumeration which the statute makes of the acts to which it refers,

42. Louisville and N.R.R. Company v. Commonwealth, 99 Ky. 132; 132; 35 S.W. 129.
43. Louisville and N.R.R. Company v. Commonwealth, 99 Ky. 132; 35 S.W. 129.
44. Ex parte Daniels, 183 Cal. 636.
45. Gallagher v. State, 141 N.E. 347 (prohibiting driving at speed greater than is "reasonable and prudent").
46. Hurst v. State (Ga.) 147 S.E. 782.
47. State v. Lanz (W.Va.) 111 S. E. 768.
48. Standard Oil Company v. U.S., 221 U.S. 1; 55 L. Ed 619; 34 L.R.A. (U.S.) 834.

and the absence of a definition of restraint of trade as used in the statute, leaves room for but one conclusion, that is, that it was expressly designed not to unduly limit the application of the act by precise definition, but, while clearly fixing a standard, that is, by defining the ulterior boundaries which could not be transgressed with impunity, *to leave it to be determined by the light of reason,* guided by the principles of law and the duty to apply and enforce the public policy embodied in the statute, in every given case whether any particular act or contract was within the contemplation of the statute."

With this doctrine before us the way is pointed and the fog of uncertainty clears in the brilliant rays of sound judicial thinking. After all, what could *unreasonable waste* mean other than such waste as in excess of that waste reasonably necessary to operate oil wells and supply the economic demand of the day. The California courts are permitted by statute to accept the true signification of all English words and phrases[49] and to find that the word "waste" and "unreasonable waste" are well known to them, we need only turn to the great volume of water cases. But before so doing, let us examine one or two other phases of the problem of uncertainty of legislative language.

The case of United States v. Alford[50] is illustrative of the doctrine that courts may apply common sense in construing a statute. Alford was indicted for violating a federal act[51] prohibiting building of fires in or "near" any forest upon the public domain. Mr. Justice Holmes decided that "the word 'near' is not too indefinite. Taken in connection with the danger to be prevented it lays down a plain enough rule of conduct for anyone who seeks to obey the law." Then in United States v Trenton Potteries Company[52] the rule of reason defined in the Standard Oil Company case was restated as follows:

"That only those restraints upon interstate commerce which are *unreasonable* are prohibited by the Sherman Law was the rule laid down by the opinions of this court in the Standard Oil and Tobacco cases. * * * * *."

A United States Statute authorizing the Secretary of War to order the removal of bridges which were shown to constitute an "unreasonable obstruction" to navigation to render navigation "reasonably safe" has been held to be sufficiently definite.[53] Dominguez Land Corporation v. Daughtery[54] is helpful in this problem of construction. A provision making it the duty of the Corporation Commissioner, under certain circumstances, to determine when a corporation was in a "safe and sound condition" was held to be a sufficient standard. And the standard set up in the ordinance considered in *In re* Newell[55] providing citrus fruits were not to be shipped "if contents of any package or of the fruit in bulk contains fifteen percent or more of citrus fruits showing in two or more segments of each fruit marked evidence of frost injury" was held to contain a sufficient standard.

The border line here, like the border line of the extent to which private right may be invaded in the interests of the public, is no clear cut line of demarcation but in the last analysis it must rest on the rule of reason and perforce there must be in the jurisprudence of the land a rule of reason.

If any doubt of the certainty of the standard set up in the Gas Conservation Act remained after a survey of the federal and state cases referred to, it should be dissipated by the great volume of California water cases wherein our courts have not hesitated to determine reasonable use and unreasonable waste of water[56] between riparian owners and between surface owners having correlative rights in percolating waters underneath their surface ownerships.[57] When confronted with the problem, courts may properly determine that a "reasonable use" means the reasonable share of one surface owner having regard to the correlative rights of other surface owners.[58] What is reasonable must be determined according to the facts in each case.[59] It is no novelty to a California court to fix the reasonable duty of water[60] and to consider the kind of soil, the general climate and the

49. C.C.P. Sec. 1875 No. 1.
50. 274 U.S. 264; 71 L. Ed 1040.
51. Act June 25, 1910, Chap. 431, Sec. 6, 36 Stat. at Large 855.
52. 273 U.S. 392; 71 L. Ed 701.
53. Union Bridge Company v. U.S. 204 U.S. 364 51 L. Ed 523.
54. 196 Cal. 468.
55. 188 Cal. 762.
56. Fall River Irrigation Dist. v. Mt. Shasta P. Corp., 202 Cal. 56; Herminghaus v. So. Cal Edison Co., 200 Cal. 81; Turner v. The James Canal Co. 155 Cal. 82.
57. San Bernardino v. Riverside, 186 Cal. 25; Katz v. Walkinshaw, 141 Cal. 128; Ex parte Elam, 6 Cal. App. 236.
58. Eckel v. Wingfield Tunnel and Development Co., 87 Cal. App. 617.
59. Stanford v. Felt, 71 Cal. 249.
60. Witherill v. Brehm, 74 Cal. App. 286; also 78 Cal. Dec. 120.

kind of crops to be raised.[61] What is unreasonable is a question of fact.[62]

The Prima Facie Evidence Feature

That the legislatures may make proof of one fact, or facts, *prima facie* evidence of another fact seems to be settled in California by the recent decision of the supreme court in People v. Osaki, 79 Cal. Dec. 244, the limitation being only that there must be a rational connection between the fact or facts, proved and the fact inferred, so that the inference is reasonable and not merely arbitrary.[39] This recent decision tempers the attack made on Section 8b of the act making the blowing of gas into the air *prima facie* evidence of unreasonable waste.

Temporary Injunction and Subsequent Moves

Resting his decision[63] on his determination that the legistlature had enacted a proper police power statute in the interests of the public at large and in the interests of that portion of the public having correlative rights in the oil and gas pool under their surface ownerships, and that the words "unreasonable waste" were sufficiently certain and that the equity powers of the court were sufficiently broad to meet the situation and make a proper decree, Judge Hazlett took evidence supplementary to the showing made in the complaint and affidavits and on March 19, 1930, granted a preliminary injunction.[64]

The injunction contains many interesting and novel features including a finding that the total gas outlets[65] "with a reasonable tolerance to take care of fluctuating demands and the necessary waste" is approximately 285,000,000 cubic feet of natural gas each day. Then the court borrowed a standard on which to apportion this amount of gas among defendant operators. The list of leases in the field was taken and the potential production figured by the office of the field umpire[66] and a gas allowance was apportioned for such case by allowing 1200 cubic feet of gas to a barrel of potential oil. Thus if a lease had a daily potential of 705 barrels of oil, it was given a gas allowance of 840,000 cubic feet of natural gas per day.

The order provided for reports on production to be made to the court and to the Oil and Gas Supervisor. It provided for modification on five days' notice and permitted new wells to discharge gas into the air for five days without being subject to the order. On March 28th the order was modified, more gas was allowed to certain defendants upon their showing they could not operate at all with the allotted gas, because of high gas-oil ratios. Certain other defendants were permitted to combine leases named and the order provided for production from such lease as it could best manage provided royalty payments to lessors were divided as to the fractional part of said returns in the proportion that the number of barrels of oil was assigned in the schedule. It further provided for unit operation (in the town lot area, as described) by three or more defendants operating five or more leases provided the net returns were divided according to the oil potential set out in te schedule.

Soon the Santa Fe Springs case will come on for hearing on permanent injunction. In the meantime a Writ of Prohibition has been granted by the Court of Appeal[67] on the petition of certain of the defendant operators and others have petitioned the Supreme Court for a Writ of Supersedeas.[68] Many friends of the court have appeared and filed briefs. Perhaps when the case comes on for hearing on permanent injunction the decision of the trial court on the question of constitutionality will have been sustained. In the meantime the many attorneys interested in the so-called gas cases puzzle over new problems daily, read cases, re-read them, analyze them, classify and distinguish them, write briefs, tear them up, rewrite them and wrinkle their foreheads.

61. Half Moon Bay Land Company v. Cowell, 173 Cal. 543; Burr v. McClay Rancho Water Co., 154 Cal. 428; California etc. v. Maderia Irr. Company, 167 Cal. 78, and the great case Lux v. Haggin, 69 Cal. 255.
62. Stanford v. Felt, 71 Cal. 249.
63. Judge Hazlett's written memorandum opinion contains an excellent comprehensive survey and analysis of the authorities.
64. People v. Associated Oil Co. et al No. 287,460 Superior Court, Los Angeles.
65. All uses, including field uses and sales to gas companies.
66. Mr. Paul Grimm.
67. Bandini Petroleum Company v. The Superior Court, No. 7292.
68. People v. Associated Oil Company, L. A. No. 12311.

Advantages of Training in Law as a Preparation for Business

NECESSITIES OF CORPORATE ORGANIZATIONS REQUIRE RECOGNITION OF LEGAL SITUATIONS. YOUNG MEN CONTEMPLATING BUSINESS CAREER SHOULD QUALIFY IN LAW

By Orra Eugene Monnette, member of Los Angeles Bar, Vice-President, Bank of Italy

During the period, running back from twenty-five to fifty years ago, the legal profession was sought after by only a few who were inspired to become lawyers by various reasons of influence making this vocation attractive to them. It was then supposed to be a chosen field of work, somewhat set apart from the other opportunities for individual endeavor, initiative and performance; in fact, the very position of bench and bar before the public mind was that of a selective profession to which not many aspired and only those who had preferential education and training for the work.

During that period which is more or less arbitrary in limits or, at least, under the modern conception, it was not conceived that a knowledge of the law or that the skill and experience developed by a lawyer in his practice had any immediate relation to ordinary business and professional vocations. Indeed, the ramifications of business were not as complex and far-reaching as they are in the present day, and the era of specialized training had not fully developed as it is today.

However, with the increasing vogue of education and educational methods there has been a change in the current of thought with reference to all specialized training.

In addition, business, as such, has received the impact and direction of legal influences more positively in the last twenty-five years than ever before in the history of business. Its highest expression has always been honorable, legal and equitable. Nevertheless, there has been a multiplication of factors directly affecting its very existence, growth and prosperity. It may be that business leaders of twenty-five years ago thought themselves above the law or, at least, were little concerned with statutory enactments, regulations and various forms of development of law and administration as applicable to business operations in general terms.

Big Business Requires Careful Understanding of The Law

The rapid development of corporate organizations; their necessities for a more careful understanding and recognition of legal situations have turned a mere complacency into a positive exaction with respect to the conduct of any business,—commercial, industrial and otherwise.

I have not in mind such offices as trust departments of banks and great finance operations where an application of legal training and experience are required froms of efficiency and management, but the broader field of business applications, usages and extensions which must, under the new order of things, be based upon certain legal foundations necessarily affected by many legal understandings and considerations.

Business men and industrial leaders long ago learned that first they must consult the legal profession to ascertain the legality, soundness and safety of their methods and operations; and, having ar-

rived at this new viewpoint of the relation of business to the legal field quickly learned that the skill and experience of the lawyer was first in his *propria persona* as a necessary adjunct; then business executives took the next step and invited him into a closer relationship as an official or as a part of the organization that they might have his personal and immediate counsel, influence and executive judgment in the conduct of the enterprise. He came into the business world as a lawyer, previously trained. He has identified himself with business, maintaining that full character for a long period of time. Then, finally, in the individual case, he may have lost his presentation as a lawyer and taken on the color of the business in which he may be engaged, never losing in his own efficiency, the habiliments of his early training and practice.

There are many self-made men in business whose original careers and achievements have verged upon the idea of the self-made man who by rugged honesty, high character and industrious application forces his way to the highest pinnacle of success. There are many outstanding examples of industrial and trade leaders who have achieved by force of their own character. These many men have never been educated or trained professionally in law or other fields. Nevertheless, it is certainly the consensus of opinion of executives and administrative leaders that a legal education, and specialized training in law and other spheres directly related to the legal realm, render any man much more capable, better fitted and more highly efficient even though the larger and almost wholly absorbing objective is not immediately in the line of legal application.

In individual cases this has been made evident over and over again. There is no difficulty whatever in picking out and classifying the more efficient man, as such, in business organizations, who has this kind of specialized experience.

Legal Experience Develops Qualities Helpful in Business

There is a fundamental reason in all this which is not far to seek. Skill, career and financial success are largely determined by mental equipment. There is no field equal to that of the legal vocation which stimulates, exercises and develops clear-headed and forceful expression, such as that induced and engendered by a study of, understanding concerning and use in experience of legal principles and in the practice of law.

This is not an attempted learned dissertation upon legal principles or the profession as such, but my concluding thought and argument (if the opportunity is present) to the young man wholly desirous of becoming a tradesman, merchant, or to enjoy any so-called big business, or to become an executive of a large corporation, that he should certainly seize every opportunity to qualify himself in the law, be admitted to the bar, and if he can take the time, engage in the actual practice of the law for a period, if only short in duration, in order that he may have the mental grasp and thorough understanding of legal arrangements and the right qualifications to make a signal success in his own business enterprise or in his affiliation with the larger business movement to which he may be attached.

The National Trend in Motor Vehicle Legislation

PROGRESS IN STANDARDIZATION OF REGULATIONS AFFECTING OWNERSHIP AND OPERATION OF MOTOR VEHICLES

By Ivan Kelso, Member of Los Angeles Bar

Before preparing this article I had the general impression that the "horseless carriage" idea is about forty years old, but I saw in a reference work that Vulcan made "twenty wheeled tripods" that "spirit moved, would obey the beck of the Gods"; also that in 1600 a road carriage, equipped with sails, carried twenty-eight people in a trial run along the coast of Holland; that in 1641 Solomon de Coste of Normandy wrote about a carriage propelled by steam, and went to a mad house for it; but steam carriages were a reality in 1680, and one made in 1770 by the French engineer, Cugnot, is still preserved. However, it was left for the internal combustion engine, which came about the year 1884, to realize the possibilities of the "horseless carriage" idea.

Steam propelled vehicles for highway uses never became very popular. They were noisy and cumbersome and frightened the farmer's horses, as well as many of the farmers themselves, so that restrictive legislation greatly limited their use. The fear which these vehicles incited was reflected in the early legislation controlling the use of the motor vehicle. As late as 1905 our Supreme Court said that an ordinance of the County of Marin was not unreasonable because it prohibited the operation of an automobile upon the country roads at night. (In re Berry, 147 Cal. 523.) In this connection the court said:

> "We may assume, therefore, to have what is common and current knowledge about an automobile. Its use as a vehicle for traveling is comparatively recent. It makes an unusual noise. It can be and usually is made to go on common roads at great velocity—at a speed many times greater than that of ordinary vehicles hauled by animals; and beyond doubt it is highly dangerous when used on country roads, putting to great hazard the safety and lives of the mass of the people who travel on such roads in vehicles drawn by horses. Fearful accidents to persons driving animals which are frightened into unmanageable terror by automobiles are of common occurrence. And while there are usually laws regulating and limiting the speed at which they may be driven, it is matter of common knowledge that these laws are frequently violated, and that it is exceedingly difficult for officers, even in the day-time, to stop them when going at forbidden speed and arrest the drivers. And it is apparent that this would be much more difficult to do in the night-time. Moreover, in the night-time even those drivers of automobiles who might be considerate of the safety of others would not be able to see an approaching team in time to take the proper precautions. Considering these matters, and many others which might be suggested, we see nothing unreasonable in the regulation—and it is only a regulation—which forbids the use of automobiles on the country roads in the night-time."

Trend Toward Uniform Regulations

In 1929 there were 34,700,000 motor vehicles registered in the world, 76 percent of which were in the United States. This tremendous growth has, of course, brought a change of attitude toward the motor vehicle. Whereas ten years ago all local legislative bodies were adopting regulations affecting this type of vehicle, restrictive and local in character, we now have a plan, largely adopted, for uniform regulations, both state and municipal.

Mr. Gurney E. Newlin, as one of the Commissioners on Uniform Laws, interested himself in a Uniform Motor Vehicle Code for the states, and induced the Directors of the Automobile Club of Southern California to loan the services of my associate, J. Allen Davis, to the Hoover Committee on Street and Highway Safety. A sub-committee of this conference, of which Mr. Davis was draftsman, after six years of work has produced a Uniform Motor Vehicle Code, the formal adoption of which the Commissioners on Uniform Laws will consider this fall.

A second sub-committee, of which Mr. Davis was likewise draftsman, has prepared a Uniform Municipal Traffic Ordinance, which has already been adopted by many cities.

Examinations for Operators

An interesting feature of the effort to obtain uniformity in motor vehicle regulations is found in the attempt to establish a standard examination for applicants for licenses to operate motor vehicles. After agreeing that there should be some kind of an examination, a struggle followed regarding the minimum age limit, the extent of the literacy test, the importance to be attached to physical infirmities, etc.

Now that these battles have been fought and won, a major fight looms just ahead. Psychologists and psychiatrists say no person should be permitted to operate a motor vehicle except after the successful passing of a thorough psychological or psychiatric test. Their argument is that emergencies constantly must be met by motor vehicle operators; that those who lack ability to coordinate mind and muscle will invariably do the wrong thing in such emergencies; that collisions logically follow; that a psychological or psychiatric examination will discover those who lack such ability and, by denying them the privilege of operating motor vehicles, collisions will decrease in appreciable number.

There is force in this argument and the doctors have received a respectful hearing. It is possible that their advice will soon be followed. The trend seems that way.

Revocation of Operators' Licenses

Not only is there a tendency to deny operators' licenses to many who have heretofore been granted them, but there is a pronounced movement toward revoking and suspending outstanding licenses for negligent and reckless driving. It seems wise and fair to require those who get into trouble, and cause death and injury to others, to submit to a severe and thorough examination to determine if they are likely to persist in such conduct, and to restrain those who give such evidence. This is the tendency and I believe it should be accelerated.

Motorists' Responsibility Acts

An interesting development of the past few years is the action of some states and the inclination of many others to require motorists to submit evidence of ability to respond in damages. Generally we do not require potential tort feasors to do this, although some common carriers have long been compelled to do it, but when we consider that 30,000 persons will be killed this year upon our public streets, and that thirty-five times that number will be injured, we get some idea of the social and economic problems which force this action.

On the surface this is a movement to require motorists to pay just claims against them. At bottom, however, I believe it is an effort to obtain compensation for the injured. As soon as it is generally realized that even with compulsory liability insurance only one of four persons injured in traffic is able to collect damages — this low percentage is largely due to the defense of contributory negligence — the true character of the demand will be revealed, and we will face the question whether we shall provide compensation for those injured in traffic regardless of negligence. There are grave social and economic problems involved, and their solution is earnestly sought by many students. While the tendency at present is to require motorists to give evidence of ability to respond in damages, we can expect that motorists will soon be asked to provide compensation for those injured in traffic regardless of negligence.

Broadened Liability of Owner

Our own Legislature, at its late session, broadened the liability of a motor vehicle owner, so that today in this state an owner is liable for the negligent operation of his motor vehicle by any person using it with the owner's permission (Section 1714¼ Civil Code.) This is an abandonment of the doctrine of respondeat superior so far as the ownership and use of a motor vehicle is concerned, and is in line with the tendency in the nation.

Our legislature has also made the state and all governmental agencies liable for the negligent operation of publicly owned vehicles by officers, agents or employees, and also for the negligent operation of privately owned motor vehicles when operated on public business within the scope of the office, agency or employment by the officer, agent or employee of the state, or of any governmental agency within the state. (Section 1714½ Civil Code; Heron v. Riley, 79 Cal. Dec. 487.)

(Continued on page 58)

Opinions on Problems of Professional Ethics

MANY MEMBERS SEEK COUNSEL AND ADVICE OF COMMITTEE ON LEGAL ETHICS UPON QUESTIONS ARISING IN EVERYDAY EXPERIENCE. SOME INTERESTING AND INSTRUCTIVE OPINIONS IN CONCRETE CASES EMPHASIZE THE HIGH STANDARDS OF CONDUCT WHICH MUST GOVERN MEMBERS OF THE BAR

In order that all the lawyers of Los Angeles County may have the benefit of the opinions of the Legal Ethics Committee of the Los Angeles Bar Association, given in response to specific requests for advice in actual situations, THE BULLETIN presents here some of the more important of these opinions. For obvious reasons the names of the persons requesting the advice of the Committee, and to whom the answers are directed, are omitted. Other opinions will be printed from time to time.

EMPLOYMENT: May a lawyer accept employment of a claimant in a personal injury case where an adjuster has made a written report of the facts to the claimant, and has failed to make a settlement; would the fact that the adjuster recommended the lawyer to the claimant to handle the litigation, affect the situation?

OPINION:

The premise of your matter is: An adjuster, who handles adjustments and settlements of personal injury cases on a contingent basis, has failed in his efforts to settle amicably a certain claim for damages on account of personal injuries received by the claimant. This adjuster has collected all the facts of the case and has delivered a written report to the claimant. You ask us two questions:

First, if the claimant should seek to employ you, furnishing you with this report of the case, would it be ethical for you to accept the employment; and

Second, would it affect the answer to the query if the adjuster had made a definite recommendation to the claimant of you as an attorney to handle the litigation required to determine the matter, after his aforesaid failure of settlement.

If we answer the first question alone it would be difficult, if not impossible, for us not to assume the fact that you would have gained from the client the knowledge that the so-called adjuster had taken the case on a contingent contract, and having failed to settle the claim had sent the client to a lawyer. This would make the first question co-extensive with the second. In this class of cases, we believe it must be assumed that the adjuster's contingent agreement is most likely in force when the claimant consults the attorney and will be operative on that portion of the money paid the claimant, if any, through the efforts of the lawyer.

We are constrained to believe that this case and its ramifications fall within that vexatious class of cases known as and resulting from so-called "ambulance chasing."

In 1925 the Legislature added a new section to our Political Code, namely, Section 633e, providing as follows:

> "The term 'adjuster' as used in this section shall include every person, partnership, association or corporation advertising, soliciting business or holding himself or itself out to the public as an adjuster of loss or damage by fire, marine, accident, liability or other loss or damage covered by any policy of insurance issued in this state, and receiving compensation and reward for adjusting such loss or damage or for the giving of advice or assistance to the insurer or the assured in the adjustment of claims for loss or damage as aforesaid."

Then the act provides for the procuring of a license or certificate of authority to act as such adjuster from the insurance commissioner, without which no one may act as such adjuster.

To our knowledge, this is the only Act of our Legislature dealing with the subject of adjusters or adjusting. This section undoubtedly covers only the subject of adjustment of matters of dispute between the insurer and the insured, and was never intended to include and does not include nor apply to the so-called adjusters of personal

injury and death claims. We are informed that the attorney for the Insurance Commission of this State has taken the position and has advised the Commission that the term "adjuster" as used in this section of the Political Code does not refer to adjusters of personal injury or death cases. Until that section of the code is clarified and construed by a decision of our Supreme Court favorable to these adjusters of personal injury or death cases, we are not inclined to classify them other than as now classified by the legal profession.

The "Adjuster" is Illegally Practicing Law

The subject matter of "ambulance chasing" is receiving especial attention of both our Los Angeles Bar Association and of the State Bar. The procuration of business by a lawyer through this method, whether directly or indirectly, is not only frowned upon by the Bar, but is a subject covered by our rules of professional conduct, and consequently one guilty of acts violating these rules is liable to disciplinary action by the Bar. Your query might, when examined only perfunctorily, seem somewhat innocuous, or perhaps a better term would be not far reaching. However, in view of what we have said we cannot allow this query to be lightly dealt with.

In the first place, the so-called adjuster is doubtless illegally practicing law when he undertakes for compensation the settlement of claims for personal injuries. He is bound to be compelled to give advice and directions concerning and in relation to the claim and the rights of the parties involved. Furthermore, and generally speaking, all too frequently the adjuster has no background, no training, no traditions of any kind, no pride of profession to guide or direct him; and consequently, the rights of the claimant frequently are not properly enforced and many times wholly lost to him. All too often the adjuster takes such advantage of the claimant and so misrepresents and so handles the matter that his acts are criminal. Therefore, an attorney who by his demeanor lends aid, comfort, or encouragement of any sort to these adjusters is, in our opinion, acting in an unprofessional manner. Every lawyer can aid the work of the Bar very materially in expurgating this noxious element by refusing in any manner to countenance or recognize these adjusters, or any of them.

Because the person mentioned in your communication as having a claim for damages on account of personal injuries has failed of settlement through an adjuster of his claim for his loss and damage, if any, does not preclude him from receiving the aid of a lawyer in the premises, even if the claimant be advised by the adjuster to seek that aid. The claimant in the first instance perhaps improvidently entered into the arrangement with the adjuster and is to be pitied rather than censured. However, in our opinion the attorney to whom the claimant appeals for legal aid has a duty to perform not only to himself as a lawyer, but to the Bar, to see that the situation is entirely and absolutely purged so far as it may be done of the invidious effects of all entanglements resulting from the relationship of the claimant with the adjuster before he is employed in the matter.

Adjuster Must be Eliminated From Case Before Attorney Can Accept It

Before the attorney consents to the employment, he should be satisfied that the adjuster is entirely and absolutely eliminated from the case and that any or all agreements between the claimant and the adjuster have been wholly abrogated, and the evidence of these matters to the attorney should be most conclusive and convincing. Additionally the attorney should in the first instance very carefully investigate the case in order to determine that the claim is meritorious and well founded. As we said in another matter presented to us that "so much odium has deservedly attached to the unscrupulous pressing of claims of this nature, that a reputable attorney must be more careful in accepting employment in this class of litigation than perhaps in any other."

FEES: Has an attorney a lien for fees upon monies collected by him for a client, and which are in the attorney's possession?

OPINION:

This is indeed a difficult question to resolve under the state of the law in California. Before we turn to the legal rights in the matter, we desire to state that as perhaps you have discovered there is no statute in California giving an attorney either a retaining lien or a charging lien. The matter of these liens has been controlled in many states by statute and such

liens were undoubtedly recognized under the common law. However, we desire to say preliminarily that aside from the lack of any statute and the absence of any satisfactory pronouncement on the subject by our Supreme Court, we feel that it is more in keeping with the traditions of our Bar that an attorney should not attempt to exercise such a lien.

Although the decisions of our State are unsatisfactory on this subject, as we have said, yet the few decisions bearing on the subject clearly indicate to us that the right of an attorney to either a retaining or a charging lien does not exist. It is admittedly true that the right to liens with which we deal every day in our practice is given only by statute, and we believe that an attorney's lien cannot and does not exist in the absence of a statute giving that right. While it may be argued that if at common law an attorney had a lien for his compensation on the money of his client collected by him, and that such common law attains in this state, except when changed or modified by statute, and that, therefore, a right to a lien in favor of the attorney exists in this state, yet we feel that in view of the position our Supreme Court has taken on the subject and because of the non-existence of the aforesaid statute, the argument would not be well taken. We might further state that our Federal Courts recognize no lien at common law in favor of an attorney, excepting so far as that lien is given by the local law.

The first case that arose in California touching on this subject is found in *Ex parte* Kyle reported in 1 Cal. 331. This case very clearly holds that an attorney has no lien on the judgment obtained by him where he claims a *quantum meruit* compensation for his services. This would be in the nature of a charging lien. This case was cited with approval in the case of Mansfield vs. Dorland, 2 Cal. at page 507. In the last mentioned case the opinion states that in the case of *ex parte* Kyle *supra*, the court "decided that an attorney has no lien upon a judgment recovered in favor of his client, as a compensation for his services." In the case of Gage vs. Atwater, reported in 136 Cal. 170, the Court says, at page 173, that "it was held at a very early day that there is no statute in this state giving costs to an attorney, and that an attorney has by law no lien for his services upon a judgment recovered in favor of his client, but that he must recover therefor in the ordinary mode of an action (*ex parte* Kyle, 1 Cal. 332)." See also Hogan vs. Black, 66 Cal. 41.

No Right to Withhold Fees

We have assumed that your query contemplates the exercising of a lien, if existing, on your clients money now in your possession for the collection of your fees charged in the matter of such collection, and have dealt with the question accordingly. We conclude that you have no right to such a lien and must follow the ordinary avenues open to you for the collection of your fee charged in the premises. If your query contemplates that you simply take out of your client's money your fee and remit the balance to him, we likewise would conclude in answering the question that you have no right and no authority, short of an agreement with your client, to do this.

We might further state that if there was any agreement between your firm and your client that you should be paid out of the money coming into your hands in this collection for the services rendered by you in collecting such money, then you would have the right to retain your fees therefrom in consonance with the rule laid down in the case of Pullen vs. Allen, 37 Cal. App. 218.

EMPLOYMENT: Is it proper for an attorney to employ a collection agent to assist in collecting a judgment upon a contingent percentage basis, which percentage would come out of the fee?

OPINION:

It is the opinion of the Committee that such an employment is not open to criticism. Section 34 of the Canons of Professional Ethics of the American Bar Association denounces the division of fees for legal services except with another lawyer based upon a division of service or responsibility; "but the established custom of sharing commissions at a commonly accepted rate upon collections of commercial claims between forwarder and receiver, though one be a lawyer and the other not (being compensation for valuable services rendered by each) is not condemned hereby where it is not prohibited by statute."

It seems to us the principle of the exception applies here. We assume that the collection agents will follow the customary

course of making a search for some leviable property, bringing pressure by personal contact or other legitimate means of persuasion or pressure, and that if any appearance in court or other professional services are required, they will employ a lawyer to conduct the proceedings. Without doubt your client would have the right to employ a collection agent to undertake to collect this judgment and base his compensation on a percentage of the amount collected. As you are acting in her behalf, we see no reason why you may not make the arrangements yourself and yield any part of your compensation in consideration of the service of the collection agents.

EMPLOYMENT: May an attorney make a "retainer contract" to lend his name to a client to aid it in collecting delinquent accounts?

OPINION:

It appears that an agreement has been entered into by you with a certain company, wherein you agreed to permit the company to use your name for the sole benefit of the company in aid of the collection of its delinquent accounts on certain form letters approved by you and to be multigraphed upon letterheads purporting to be your letterheads, subscribed with your facsimile signature, all such letterheads to be prepared, furnished and mailed and sent out by the company at its own cost and expense and without any reference to you or your office whatever in any particular case. It is therein further provided that as your compensation for permitting the company to use your name and so forth in the matter of this letter, you shall receive a certain compensation fixed in the agreement. It is further especially provided therein that nothing contained in the agreement shall be held or construed as an employment of you for any purpose other than above mentioned.

It is the opinion of this Committee that entering into and operating under the terms of such agreement is highly unethical. Under the canons of the American Bar Association there is a rule as follows:

> "The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. * * * *"

The situation created by the aforementioned agreement is undoubtedly one which was in the minds of the committee of the American Bar Association drafting the aforesaid rule of ethics and your agreement falls directly within the inhibition of the rule quoted.

The canons of neither the Los Angeles Bar Association nor of the State Bar of California contain the aforementioned rule, but it is well understood among lawyers that there are unwritten laws controlling the members of our bar association and one of them is that it is unethical for a lawyer to lend his name for the use of another in the manner revealed by the contract before us.

The cannons of the Los Angeles Bar Association provide:

> "The following canons of ethics are adopted by the Los Angeles Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative though not specifically mentioned."

See also Section 287, Sub. 4, C.C.P.

LEGAL ETHICS COMMITTEE OF THE
LOS ANGELES BAR ASSOCIATION
By Joseph Smith, *Chairman.*

Measure No. 10, Usury Amendments Analyzed

By Victor Ford Collins of the Los Angeles Bar

It is admitted by most members of the Bar that the present usury law is unsatisfactory, both from a legal and a commercial standpoint. A usury law should be intended for the protection of the man whose necessities make him a prey of money lenders. It does not properly apply to the loaning of money for commercial enterprises. The present law is ambiguous in many particulars. The amendments tend to clarify these ambiguities and also make the usury law, as amended, a protection for the persons intended to be protected but not to be a detriment for the promotion of business.

The first change eliminates the requirement that the rate of interest in excess of seven (7%) per cent be expressed in writing. Many an innocent lender of money has suffered losses because of the unfair advantage that has been taken by unsrupulous borrowers of this provision of the law.

The Supreme Court in *In re Washer*, 200 Cal. 598, 606, properly characterized the puprose of the usury law "to protect the *individual* necessitous borrower from the rapacity of the more fortunate lender." Further the Court said: "Many states, such as Illinois, Virginia, Wisconsin, New York, Maryland, Delaware, North Carolina, and South Carolina, have met the question by expressly denying to corporations the right to plead usury." The California Supreme Court itself has thus practically invited the present change. The change is in accordance with the laws of many other states. It is just. Corporations are formed for profit and should not be able to repudiate their bargains under the shelter of a law meant to protect the needy individual.

The amendment which applies to construction loans is nothing more than an authorization by law of procedure almost uniformily recognized at the present time. It is proper, where money has been set aside, that it should earn interest.

The new Section 6 of the poposed amendment defines necessary legal practice. A construction loan is more hazardous than loans on buildings completed. If the building stops, the lender has a bad snarl to untangle. Obviously such loans will not be made unless they are given sufficient safeguards. Construction loans are the very life of the construction business in California.

The provision on prepayment should not be objectionable because it merely codifies existing law. In no case ever decided under any usury law has a payment made for the privilege of prepaying a loan been held usurious.

The new provision concerning acceleration is fair. The lender lends the borrower a sum of money and deducts part of the interest in advance. The borrower defaults on the first interest payment and the loan is accelerated. Is the loan usurious? The authorities are divided. The amendment provides that the loan is not usurious. This is just. The lender, by the default, has been caused expense and trouble. The borrower can prevent it by performing his contract.

Many times default by the borrower brings loss in excess of interest due to unknown encumbrances. This view is expressed by prevailing judicial opinion. It is the opinion of many lawyers that the new Section is only a codification of the dictum in the second opinion in *Haines v. Commercial Mortgage Company*.

A new Section 10, is proposed to be added by amendment. It provides that; pawnbrokers and 'industrial loan companies' shall be subject to regulation by the legislature of the State of California.

One of the most puzzling problems before the Bar at the present time is whether or not the present usury law conflicts with the pawnbroker law and the industrial loan company law. There are many divergent opinions but the writer believes that the best opinion is to the effect that the two laws above referred to should be accepted from the application of the usury law. The proposed amendment clarifies this situation and makes it definite, and gives to the legislature the real opportunity to properly regulate pawnbrokers and small loan companies.

The unfairness of the present usury law in certain particulars has injured its enforcement. In like manner the uncertainty of the usury law has injured its effectiveness as to the application of those portions which are not uncertain. In the opinion of the writer, the present proposed Proposition No. 10 embodies amendments that will aid greatly in clarifying the present usury law to the benefit of the Bar and the people of the State of California.

NATIONAL TREND IN MOTOR VEHICLE LEGISLATION

(Continued from page 49)

The tendency to hold the owner or principal liable for the negligent operation of a publicly owned motor vehicle seems destined to go even to the extent of including the government of the United States of America as Senator Howell of Nebraska has lately introduced a measure (S. 4377) which if adopted will authorize the payment of claims for property damage and personal injuries or death arising out of the negligence or wrongful act or omission of any officer or employee of the Government within the scope of his office or employment and not arising out of contract. While this measure was not passed at the recent session of Congress, we can expect it will be reintroduced and eventually adopted.

Federal Highways

Early in the history of our federal government Congress undertook the building of some federal roads, under the power to provide for the common defense and general welfare of the United States. It soon abandoned this effort, leaving the task of road building to the states and to local communities.

In 1916 Congress again took an interest in road building, this time under its power to establish post offices and post roads. It did not resume the building of federal roads as such, but adopted a plan of federal contributions to local road building, under which plan the vast sum of $150,000,000.00 is now available annually for distribution among the states by virtue of which a system of great highways, interstate in character and of uniform standards, is in the making.

The demands of this modern and widely used method of transportation—the motor vehicle—have lately revived the interest of Congress in federal roads, this time in connection with the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes" by virtue of which a system of super highways, built and controlled by the federal government itself, may eventually be constructed.

There are several other tendencies of interest, one of major importance and three or four of minor importance, the former being a change in the method of handling personal injury suits and one of the latter being the erecting of uniform signs, signals and markings. In another article I would like to point out what is happening in these matters.

Declaratory Relief and Its Operation

RECENT DEVELOPMENTS IN THE LAW. COURTS PROCEEDING WITH CAUTION IN APPLYING THE REMEDY

By William G. Randall of the Los Angeles Bar

Sections 1060 to 1062a, inclusive, of the Code of Civil Procedure, by which the courts are vested with power to grant "declaratory relief," either as the sole outcome of the action, or in conjunction with such other relief as may be found appropriate to the case, constitute a new departure in California jurisprudence. Few would question that the new and enlarged jurisdiction offers great possibilities in the practical administration of justice. It is obvious that the full scope of these possibilities is not yet generally appreciated by either the Bar or the Bench, and that a complete understanding and application of the remedy will require many years in its development. The legislative expression is always the mere nucleus of any law; the actual results of its operation, scope and limitations, must be sought in the decided cases where the courts have construed and applied the statute.

From a study of the decisions which have thus far been handed down under declaratory relief, it is quite evident that the courts of review, whether from a deliberately considered policy, or from innate conservatism, are proceeding with extreme caution in defining the metes and bounds and setting up the landmarks of the new jurisdiction. Both the possibilities of the law and the policy of the courts make it a matter of more than ordinary interest and importance to consider cases that go to the fundamental principles of declaratory relief, as they appear.

Some Interesting Cases Under the Declaratory Relief Statute

The Court will not attempt, under the guise of Declaratory Relief, to construe and declare a contract which it is unable to enforce specifically, either for lack of certainty or other cause.

L. A. Soda Works Co. v. So Cal. Aquazone Co. et al. 61 C. A. D. 143. In that case the Plaintiff was sub-lessee under the defendant Aquazone Co. of certain premises owned by defendant Phillips. The lease was for a term extending until March 1, 1927, "and any renewal of the same," at the rental "specified in the said lease." Plaintiff alleged that it was in possession of the demised premises and had performed all the conditions of the lease to be performed on its part. The term of the sub-lease commenced on June 1st, 1925; and the written evidence thereof was contained in the letter mentioned below. During the latter part of May, 1926, the Aquazone Co., sub-lessor, made demand on plaintiff for payment of rent at $200.00 per month after June 1st, or possession of the premises. The prayer was "that the court appraise and fix, as of June 2nd, 1926, the monthly rental for the unexpired term from June 1st, 1926, to March 1st, 1927."

The letter mentioned, under date of June 2nd, 1925, was in part as follows:

> "The understanding is that for the first year of our agreement, commencing June 1, 1925, you are to pay the rentals and preform the services hereinafter recited, with the understanding that at the end of the period a revised agreement will be made, based on the business which has been done, and which will cover the life of the lease and any renewal of the same."

The rent agreed upon for the first year, under the sub-lease, was $100.00 per month.

Plaintiff contended that the contract constituted an agreement to arbitrate at the end of the first period as to the rental value of the premises, for the purposes of an extension, in aid of the main contract which was a continuing one; and relied on *Kaufman vs. Liggett*, 209 Pa. 87; 58 Atl. 129. The Court, after reciting the facts, and the theory of the appellant, said:

> "However, we think it unnecessary to pursue further this course of discussion, both for the reason that the contract contained no reference to an arbitration as to the rental value of the premises, which in any event would have been ineffective, and that it is too indefinite to enable a court of equity to specifically enforce it."

The Court then points out that the agreement between the parties for a consideration contemplated the performance of ser-

vices by plaintiff to its sub-lessor, as well as the payment of money, and that

> "what the parties might deem equitable as cash compensation for the use of the premises in addition to these concessions cannot be conjectured, much less decided, judicially";

and close the opinion with the following quotation from 1 Williston on Contracts, Sec. 45:

> " 'Although a promise may be sufficiently definite when it contains an option given to the promisor or promisee, yet if something is reserved for the future agreement of both parties, the promise can give rise to no legal obligation until such future agreement. Since either party, by the very terms of the agreement, may refuse to agree to anything to which the other party will agree, it is impossible for the law to affix any obligation to such a promise.' "

While the Court did not find it necessary to enlarge on the point in the rather brief opinion in the above case, the decision is clearly traceable to the fundamental rule that the principles of declaratory relief are not applicable unless there is an "actual controversy relating to the *legal* rights and duties of the respective parties." This rule, which is basic in the law of declaratory relief, is discussed at length, with copious authorities, in *Blakeslee vs. Wilson*, 190 Cal. 479, in which sections 1060, 1061 and 1062 of the Code of Civil Procedure were held constitutional.

Circumstances may arise in which a judgment of non-suit is proper in an action for Declaratory Relief.

Stratton vs. Cornelius, 59 C. A. D. 284.

The appeal there was from a judgment of non-suit in a case in which the plaintiffs sought to have it declared that certain property owned by the defendants was held by them subject to restrictions that it should not be "leased or rented to any person or persons other than of the white or Caucasian race . . . . . or be used or occupied, or be permitted to be used or occupied by any person other than of the white or Caucasian race."

It was alleged that the defendants were about to convey the real property described in the complaint to two certain persons named; and it was admitted by the answer that the proposed grantees were negroes. The trial court ordered a non-suit. Judgment was affirmed, on the authority of *Los Angeles Investment Co. vs. Gary*, 181 Cal. 681, upon the theory that a *sale* of the property was not a breach of the restrictions stated.

Where the plaintiff has other speedy and adequate remedy, it is within the discretion of the court to refuse to take jurisdiction in Declaratory Relief, under the provisions of C. C. P. 1061.

Stenzel vs. Kronick, 60 C. A. D. 1076.

The appeal was from a judgment entered against the plaintiff after a general demurrer to the complaint had been sustained. In form, the action was to quiet title; and the only allegation of plaintiff's interests in the real property described was that by reason of a money judgment of record he was the holder of a statutory lien on all real property of the judgment debtor's defendant, situated in the county where judgment was secured.

> "The complaint further alleges that a controversy exists between the respective parties to the action regarding the validity of the asserted lien upon the property described, as security for the payment of the judgment."

After holding that a judgment does not create an actual interest in the real property upon which it becomes a lien, such as will warrant the maintenance of an action to quiet title, the Court says:

> "Nor will a suit for declaratory relief necessarily lie under such circumstances. Section 1061 of theCode of Civil Procedure provides: 'The court may refuse to exercise the power granted by this chapter in any case where its declaration or determination is not necessary or proper at the time under all the circumstances.'
>
> "Since the appellant has a speedy and adequate remedy for the satisfaction of his judgment by means of levying an execution, upon which proceeding the validity of the lien may be tested if it should then be questioned, the court had a discretion to refuse to accept jurisdiction under section 1060 of the Code of Civil Procedure, on the ground that it was unnecessary."

Municipal Ordinances and Declaratory Relief

Municipal ordinances are within the scope of the jurisdiction in the administration of Declaratory Relief.

Andrews vs. City of Piedmont, 60 C. A. D. 185.

"The plaintiff commenced an action to obtain a judgment of declaratory relief. . . . . The plaintiff sought a decree that a municpial zoning ordinance is invalid. The defendant (appellant) claims that the court had no authority to declare invalid a municipal ordinance."

It is necessarily implied from the Court's statement of the theory of the case that the claim of the appellant as above stated was intended to apply to the powers of the court under C. C. P. 1060. The general authority of the court to declare a municipal ordinance invalid on constitutional or other grounds was not involved. The contention of the appellant city was that the power of the trial court under C. C. P. 1060 *et seq.*, is confined to the construction and interpretation of private writings. In support, the appellant specially relied on the distinction between the California code sections and the statute of Kansas, which contains words expressly enumerating statutes and municipal ordinances. The Court says:

"The vice in this reasoning is the failure to note that our statute is written in the disjunctive. The power is manifold. It includes the power to construe private writings, as the defendant contends. But it goes much further and also includes the broad power: 'Any person . . . . . who desires a declaration of his rights or duties . . . . . in respect to, in, over or upon property may', etc. Under the latter grant, the plaintiff in the first instance is not bound to enumerate every statute that may be involved. But on the trial, as the hearing of the case proceeds, the trial court at a proper time will be called upon to construe and interpret each statute or municipal ordinance which may be involved."

In an action for Declaratory Relief, it must be clearly brought to the attention of the court and the adverse party that the plaintiff demands a declaratory judgment. The prayer for general relief is not sufficient in this respect.

Merchants Trust Co. vs. Hopkins, 61 C. A. D. 385.

Appellant was the owner in fee of the coal and mineral rights in certain lands in Los Angeles County. These rights had not been separately assessed prior to the year 1926. In that year the defendant County Assessor separately assessed the coal and mineral rights for $80,700.00; and upon the theory that they had escaped taxation for the previous year, likewise assessed them for the year 1925. The portion of the opinion which deals with Declaratory Relief appears on pp. 390, 391.

The Court points out that "the provisions for Declaratory Relief added to the Code of Civil Procedure in 1921 are still somewhat of a novelty in our system of judicial procedure," and quotes the substance of C. C. P. 1860, continuing as follows:

"In construing this section it must be borne in mind that it provides for a new and additional form of relief to that theretofore available in the courts; and where an action is brought seeking affirmative relief and declaratory relief in addition thereto, the complaint and the prayer should be so framed as to clearly advise the trial court and the adverse party that the plaintiff is seeking, in addition to some affirmative relief theretofore open to him, a declaratory judgment under the section of the code. The language of the section itself, being simply permissive in form, makes this perfectly clear. 'He *may* ask for a declaration of rights or duties, either alone or with other relief.' "

On the appeal the appellant claimed that it had sought a declaratory judgment as to the validity of the assessment for 1925, and that the failure of the trial court to give such a judgment was reversible error. It is inferable at least from the opinion that there was nothing on the record to show that this point had been specifically called to the attention of the court below. The Court points out that the actual controversy was precipitated by the threat of the respondent Assessor to sell the property for the 1926 taxes, and that in the complaint there was no clear prayer for a declaratory judgment as to the 1925 taxes.

"Having in mind that the immediate controversy concerned a threatened sale by the Assessor for the 1926 taxes, we are satisfied that nothing in the prayer was calculated fairly to advise the court that appellant was seeking declaratory judgment as to the validity of the assessment for 1925. . . . . Nowhere in the prayer is the 1925 assessment mentioned in terms.

"We must indulge in every presumption not contradicted by the record on appeal in favor of the action of the trial court. The right to ask for a declaratory relief is optional with the plaintiff. We must, and do, in support of the trial

court's action, presume that neither by the prayer of the complaint, nor otherwise, was it brought clearly to the attention of the trial judge that appellant was seeking declaratory relief under section 1060 of the Code of Civil Procedure."

Validity of Disputed Claim

Circumstances may arise in which the Court can properly consider the validity of a disputed claim for the payment of money in an action for Declaratory Relief.

Kendall et al. as Trustees etc. vs. San Pedro Lumber Co. 58 C. A. D. 1290.

Plaintiffs and appellants were assignees in trust for the benefit of creditors of an insolvent corporation. Annexed to the instrument of assignment in trust was "Schedule D," in which was set out a list of creditors with the amount due to each. From Schedule D it appeared that plaintiff's insolvent was indebted to the assignor of defendant in the sum of $45,129.35. The plaintiffs instituted this action to obtain a declaratory judgment relative to the validity of the claim above stated. Upon the trial, the plaintiffs offered no evidence. The defendant introduced the declaration of trust of which Schedule D was a part, and its assignment, and rested. The trial court found, among other matters, that the declaration of trust and assignment had been fully executed by plaintiffs except as to the distribution of assets; that the items set down in Schedule D exhibited the several amounts due to the creditors of the insolvent; that defendant, as assignee of Goodhue, the original creditor, was entitled to its pro rata share of the assets, based on its claim of $45,129.35; and that the assignment, declaration of trust and Schedule D constituted an account stated. The attack on appeal was upon the last finding.

Judgment affirmed. Held—that the declaration of trust, assignment and schedule executed by the insolvent constituted admissions of its indebtedness to the creditors named; that such admissions were binding upon the assignees of the insolvent; and that the evidence introduced by the defendant was sufficient to establish a *prima facie* case on its behalf. It was further held that the trial court erred in treating the written instruments mentioned as an account stated, but that the error was not ground for reversal.

> "As we read the record, both parties submitted the cause upon the declaration of trust and assignment, including Schedule D. This was sufficient proof, as we have said, to make a case in favor of the respondent; and there being no contradictory testimony, the judgment in favor of the respondent, that the records show a correct statement of the amount due the respondent, must be upheld even though it is granted that the court was in error in denominating Schedule D a stated account."

This seems to be a rather unusual case. One feels that the ground, tacitly received though not specifically announced, upon which the court accepted jurisdiction in declaratory relief was that the plaintiffs were trustees of an active trust; and as such, under rules otherwise established, they were entitled to a judicial determination of their duties and responsibilities. It is hardly conceivable that the proceeding in declaratory relief will be opened up for general use in the testing of disputed claims for the payment of money. In any ordinary case the plaintiff would have his speedy and adequate remedy by an action of assumpsit, or other familiar and appropriate procedure; and the court might, and probably would, decline to take jurisdiction in declaratory relief under the provision of C. C. P. 1061, upon the ground that a declaration was unnecessary as suggested in *Stenzel vs. Kronick, supra.*

It may be taken as established law in California that the provisions of Sections 1060, 1061 and 1062 of the Code of Civil Procedure are constitutional and valid. This point has undoubtedly been settled on the authority of *Blakeslee vs. Wilson,* 190 Cal. 479; *James vs. Hall,* 88 Cal. App. 528; and *Lane Mortgage Co. vs. Crenshaw,* 93 Cal. App. 411, 433. As to the further rules of procedure stated in the cases discussed above, it seems scarcely necessary to suggest that for the time being they must be accepted as tentative and provisional. It is fairly to be expected that the rules here announced will be modified, limited and explained in important particulars before the law of declaratory relief can be taken to be settled and established.

The President's Page

Proposed Amendments to the Constitution and By-laws

There will be presented at the member's meeting in October, to be voted on at the November meeting, a proposed revision of the constitution and by laws of the Association. Copies of the amendments offered will be mailed to each member. It is not practicable to furnish copies of the present constitution and by laws to the members as it would necessitate their being printed in large numbers at an unnecessary expense. A limited number of copies is available to those who desire to make a close study of the proposed changes, but it has been thought best to call attention to the more important amendments by means of this article upon the subject.

Changes in the Constitution

Membership: Two new classes of membership have been added by the proposed amendments, namely, non-resident and affiliated. A non-resident member is one who maintains his principal office outside of the city of Los Angeles, and in a city or district in which there is no affiliated bar association. This membership carries full privileges in the association and the dues are one-half those of active members. An affiliated member is one who is a member of an affiliated association and who has been accepted for membership in the parent association. Applications for this class of membership are to be passed upon by the membership committee as in the case of other applications. An affiliated membership entitles the holder to full privileges of the association, and carries dues of $5.00 per year. An adjustment of dues is provided for in cases of those affiliated members who have paid dues of $10.00 for the current year to the Los Angeles association. There are 11 bar associations in the county outside of Los Angeles city. It is expected that all will affiliate with the parent association, and as their combined memberships number some 642, of which 174 are not members of the Los Angeles Association, the mutual advantages of affiliation are quite obvious.

Honorary Members: Judges of the Superior Court are not listed among the honorary members. Since a large number of them regularly pay dues to the association it is considered only fair that all should be placed upon the same basis of membership.

Board of Trustees: The Board of Trustees is to be increased to fifteen (15) members, including the president and senior and junior vice presidents. Four members of the board will be elected from among the affiliated members, not more than one from each affiliated association; the remaining eight will be elected as usual from the active members of our association. Terms of office will be arranged so that one-half of the entire membership of the board will be elected each year.

Secretary and Treasurer: The offices of secretary and treasurer are to be filled by the board of trustees from its members.

Executive Secretary: The board is authorized to employ an executive secretary, which position may be filled by one who is not a member of the association. The secretarial duties have become so arduous as to take the time—and full time at that—of a competent and experienced man. To require the secretary to assume the full duties of this work would be to retire him from the practice of law; upon the other hand, the secretary, being a member of the board of trustees, should be actively engaged in practice. The plan of having an executive secretary has been followed for one and one-half years with excellent results and no doubt will be continued indefinitely.

Elections: The annual election will be completed in January but installation of officers will not take place until the February meeting. The intervening month will give time for the selection of committee members and preparation for immediate assumption of duties by the new officers,

trustees and committees after the February meeting. The additional time for organization work will be of undoubted advantage as the selection and organization of committee members is no small task and should be done without interruption of the work of the association.

Grievance Committee: The Grievance Committee has been abolished. Since all disciplinary work is now in the hands of The State Bar, there is no present need for a grievance committee. If, at some time in the future, it shall be decided that all or some of the local disciplinary work should be resumed by the bar association and carried on by accusation filed in the Superior Court, the committee can be revived by amendment to the By Laws, but that contingency is quite remote.

Arbitration Committee: This committee was created in 1929 and has been vested with jurisdiction to arbitrate disputes between lawyers and between lawyers and clients when the matters in controversy are properly submitted for decision. It has functioned ably and with satisfactory results for nearly two years, and promises to be an outstanding committee of the association. This committee should be resorted to in cases of disputes which otherwise would result in unseemly and expensive litigation. It is hoped that the members of the association will familiarize themselves with the work of the committee and make use of its services in appropriate cases.

Other Committees: The following standing committees have been retained: Membership, Legal Ethics, Judiciary, Constitutional Amendments, Substantive Law, Pleading and Practice, Criminal Law and Procedure (changed to Criminal Law Procedure), Unlawful Practice of the Law, and Public Defender's List.

The following committees have been added to the list of standing committees: Arbitration, Bulletin, Co-ordination of Committee Work, Corporations, Illegal Practices, Junior Committee, Municipal Corporations, Probate Law and Procedure and Program.

The Judiciary Campaign committee will be appointed as a special committee in the years in which judicial campaigns are held. Other special committees may be appointed by the President.

The committees on Publicity and Courts of Inferior Jurisdiction have been abolished. It was found that there was nothing for the former to do and that the latter has been supplanted by the Special Joint Committee on Municipal Courts composed of some of the members of the board of trustees and a like number of Judges of the Municipal Court.

Without going into detail, it may be said that the duties and jurisdiction of the several committees have been carefully considered and defined so as to avoid duplication of work.

The draft of the new constitution and by-laws to be proposed represents the work of two Co-ordination or Master Committees and two Boards of Trustees, which has been under way for more than a year and has been finally approved by a joint committee from the Board of Trustees, the Co-ordination Committee and a committee from the bar associations outside of Los Angeles city. It is now to be submitted to the membership of the association with the hope that it will be carefully studied and that when all constructive suggestions for its improvement have been considered at the November meeting, it will be adopted in such form as constitute the governing law of the association for a number of years to come.

CLEMENT L. SHINN.